

AMENDED IN SENATE APRIL 14, 2015  
AMENDED IN SENATE MARCH 12, 2015

**SENATE BILL**

**No. 165**

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**Introduced by Senator Monning**

February 4, 2015

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An act to amend Section 12025 of the Fish and Game Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 165, as amended, Monning. Production or cultivation of a controlled substance: civil penalties.

Existing law imposes various civil penalties for violations of specified provisions of the Fish and Game Code in connection with the production or cultivation of a controlled substance. Existing law requires all civil penalties collected to be apportioned as provided, including 30% of the funds to be distributed to the investigating agency to be used to reimburse the cost of any investigation directly related to the violations described in these provisions.

Existing law authorizes the Department of Fish and Wildlife to impose those civil penalties administratively, subject to specified requirements relating to complaint and hearing procedures, among other things. Existing law authorizes the department to adopt regulations to implement these provisions and requires the administrative penalties collected to be apportioned in a specified manner.

This bill would impose various additional civil penalties, subject to these provisions, for violations of specified provisions of the Penal Code and the Public Resources Code, in connection with the production or cultivation of a controlled substance.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 12025 of the Fish and Game Code is  
2     amended to read:
- 3     12025. (a) In addition to any penalties imposed by any other  
4     law, a person found to have violated the code sections described  
5     in paragraphs (1) to (11), inclusive, in connection with the  
6     production or cultivation of a controlled substance on land under  
7     the management of the Department of Parks and Recreation, the  
8     Department of Fish and Wildlife, the Department of Forestry and  
9     Fire Protection, the State Lands Commission, a regional park  
10    district, the United States Forest Service, or the United States  
11    Bureau of Land Management, or within the respective ownership  
12    of a timberland production zone, as defined in Chapter 6.7  
13    (commencing with Section 51100) of *Part 1* of Division 1 of Title  
14    5 of the Government Code, of more than 50,000 acres, or while  
15    trespassing on other public or private land in connection with the  
16    production or cultivation of a controlled substance, shall be liable  
17    for a civil penalty as follows:
- 18    (1) A person who violates Section 1602 in connection with the  
19    production or cultivation of a controlled substance is subject to a  
20    civil penalty of not more than ten thousand dollars (\$10,000) for  
21    each violation.
- 22    (2) A person who violates Section 5650 in connection with the  
23    production or cultivation of a controlled substance is subject to a  
24    civil penalty of not more than forty thousand dollars (\$40,000) for  
25    each violation.
- 26    (3) A person who violates Section 5652 in connection with the  
27    production or cultivation of a controlled substance is subject to a  
28    civil penalty of not more than forty thousand dollars (\$40,000) for  
29    each violation.
- 30    (4) A person who violates subdivision (a) of Section 374.3 of  
31    the Penal Code in connection with the production or cultivation  
32    of a controlled substance is subject to a civil penalty of not more  
33    than forty thousand dollars (\$40,000) for each violation.
- 34    (5) A person who violates paragraph (1) of subdivision (h) of  
35    Section 374.3 of the Penal Code in connection with the production

1 or cultivation of a controlled substance is subject to a civil penalty  
2 of not more than forty thousand dollars (\$40,000) for each  
3 violation.

4 (6) A person who violates subdivision (b) of Section 374.8 of  
5 the Penal Code in connection with the production or cultivation  
6 of a controlled substance is subject to a civil penalty of not more  
7 than forty thousand dollars (\$40,000) for each violation.

8 (7) A person who violates Section 384a of the Penal Code in  
9 connection with the production or cultivation of a controlled  
10 substance is subject to a civil penalty of not more than ten thousand  
11 dollars (\$10,000) for each violation.

12 (8) A person who violates subdivision (a) of Section 4571 of  
13 the Public Resources Code in connection with the production or  
14 cultivation of a controlled substance is subject to a civil penalty  
15 of not more than ten thousand dollars (\$10,000) for each violation.

16 (9) A person who violates Section 4581 of the Public Resources  
17 Code in connection with the production or cultivation of a  
18 controlled substance is subject to a civil penalty of not more than  
19 ten thousand dollars (\$10,000) for each violation.

20 (10) A person who violates Section 2000 in connection with  
21 the production or cultivation of a controlled substance is subject  
22 to a civil penalty of not more than ten thousand dollars (\$10,000)  
23 for each violation.

24 (11) A person who violates Section 2002 in connection with  
25 the production or cultivation of a controlled substance is subject  
26 to a civil penalty of not more than ten thousand dollars (\$10,000)  
27 for each violation.

28 (b) (1) In addition to any penalties imposed by any other law,  
29 a person found to have violated the code sections described in this  
30 subdivision in connection with the production or cultivation of a  
31 controlled substance on land that the person owns, leases, or  
32 otherwise uses or occupies with the consent of the landowner shall  
33 be liable for a civil penalty as follows:

34 (A) A person who violates Section 1602 in connection with the  
35 production or cultivation of a controlled substance is subject to a  
36 civil penalty of not more than eight thousand dollars (\$8,000) for  
37 each violation.

38 (B) A person who violates Section 5650 in connection with the  
39 production or cultivation of a controlled substance is subject to a

1 civil penalty of not more than twenty thousand dollars (\$20,000)  
2 for each violation.

3 (C) A person who violates Section 5652 in connection with the  
4 production or cultivation of a controlled substance is subject to a  
5 civil penalty of not more than twenty thousand dollars (\$20,000)  
6 for each violation.

7 (D) A person who violates subdivision (a) of Section 374.3 of  
8 the Penal Code in connection with the production or cultivation  
9 of a controlled substance is subject to a civil penalty of not more  
10 than twenty thousand dollars (\$20,000) for each violation.

11 (E) A person who violates paragraph (1) of subdivision (h) of  
12 Section 374.3 of the Penal Code in connection with the production  
13 or cultivation of a controlled substance is subject to a civil penalty  
14 of not more than twenty thousand dollars (\$20,000) for each  
15 violation.

16 (F) A person who violates subdivision (b) of Section 374.8 of  
17 the Penal Code in connection with the production or cultivation  
18 of a controlled substance is subject to a civil penalty of not more  
19 than twenty thousand dollars (\$20,000) for each violation.

20 (G) A person who violates Section 384a of the Penal Code in  
21 connection with the production or cultivation of a controlled  
22 substance is subject to a civil penalty of not more than ten thousand  
23 dollars (\$10,000) for each violation.

24 (H) A person who violates subdivision (a) of Section 4571 of  
25 the Public Resources Code in connection with the production or  
26 cultivation of a controlled substance is subject to a civil penalty  
27 of not more than eight thousand dollars (\$8,000) for each violation.

28 (I) A person who violates Section 4581 of the Public Resources  
29 Code in connection with the production or cultivation of a  
30 controlled substance is subject to a civil penalty of not more than  
31 eight thousand dollars (\$8,000) for each violation.

32 (J) A person who violates Section 2000 in connection with the  
33 production or cultivation of a controlled substance is subject to a  
34 civil penalty of not more than eight thousand dollars (\$8,000) for  
35 each violation.

36 (K) A person who violates Section 2002 in connection with the  
37 production or cultivation of a controlled substance is subject to a  
38 civil penalty of not more than eight thousand dollars (\$8,000) for  
39 each violation.

(2) Each day that a violation of a code section described in this subdivision occurs or continues to occur shall constitute a separate violation.

(c) The civil penalty imposed for each separate violation pursuant to this section is in addition to any other civil penalty imposed for another violation of this section, or any violation of any other law.

(d) All civil penalties imposed or collected by a court for a separate violation pursuant to this section shall not be considered to be fines or forfeitures, as described in Section 13003, and shall be apportioned in the following manner:

(1) Thirty percent shall be distributed to the county in which the violation was committed pursuant to Section 13003. The county board of supervisors shall first use any revenues from those penalties to reimburse the costs incurred by the district attorney or city attorney in investigating and prosecuting the violation.

(2) (A) Thirty percent shall be distributed to the investigating agency to be used to reimburse the cost of any investigation directly related to the violations described in this section.

(B) If the department receives reimbursement pursuant to this paragraph for activities funded pursuant to subdivision (f) of Section 4629.6 of the Public Resources Code, the reimbursement funds shall be deposited into the Timber Regulation and Forest Restoration Fund, created by Section 4629.3 of the Public Resources Code, if there is an unpaid balance for a loan authorized by subdivision (f) of Section 4629.6 of the Public Resources Code.

(3) Forty percent shall be deposited into the Timber Regulation and Forest Restoration Fund, created by Section 4629.3 of the Public Resources Code, and used for grants authorized pursuant to Section 4629.6 of the Public Resources Code that improve forest health by remediating former marijuana growing operations.

(e) Civil penalties authorized pursuant to this section may be imposed administratively by the department if all of the following occur:

(1) The chief deputy director or law enforcement division assistant chief in charge of marijuana-related enforcement issues a complaint to any person or entity on which an administrative civil penalty may be imposed pursuant to this section. The complaint shall allege the act or failure to act that constitutes a violation, any facts related to natural resources impacts, the

1 provision of law authorizing the civil penalty to be imposed, and  
2 the proposed penalty amount.

3 (2) The complaint and order is served by personal notice or  
4 certified mail and informs the party served that the party may  
5 request a hearing not later than 20 days from the date of service.  
6 If a hearing is requested, it shall be scheduled before the director  
7 or his or her designee, which designee shall not be the chief deputy  
8 or assistant chief issuing the complaint and order. A request for a  
9 hearing shall contain a brief statement of the material facts the  
10 party claims support his or her contention that no administrative  
11 penalty should be imposed or that an administrative penalty of a  
12 lesser amount is warranted. A party served with a complaint  
13 pursuant to this subdivision waives his or her right to a hearing if  
14 a hearing is not requested within 20 days of service of the  
15 complaint, in which case the order imposing the administrative  
16 penalty shall become final.

17 (3) The director, or his or her designee, shall control the nature  
18 and order of hearing proceedings. Hearings shall be informal in  
19 nature, and need not be conducted according to the technical rules  
20 relating to evidence. The director or his or her designee shall issue  
21 a final order within 45 days of the close of the hearing. A copy of  
22 the final order shall be served by certified mail upon the party  
23 served with the complaint.

24 (4) A party may obtain review of the final order by filing a  
25 petition for a writ of mandate with the superior court within 30  
26 days of the date of service of the final order. The administrative  
27 penalty shall be due and payable to the department within 60 days  
28 after the time to seek judicial review has expired, or, where the  
29 party did not request a hearing of the order, within 20 days after  
30 the order imposing an administrative penalty becomes final.

31 (5) The department may adopt regulations to implement this  
32 subdivision.

33 (f) All administrative penalties imposed or collected by the  
34 department for a separate violation pursuant to this section shall  
35 not be considered to be fines or forfeitures, as described in Section  
36 13003, and shall be deposited into the Timber Regulation and  
37 Forest Restoration Fund, created by Section 4629.3 of the Public  
38 Resources Code, to repay any unpaid balance of a loan authorized  
39 by subdivision (f) of Section 4629.6 of the Public Resources Code.  
40 Any remaining funds from administrative penalties collected

1 pursuant to this section shall be apportioned in the following  
2 manner:

3 (1) Fifty percent shall be deposited into the Timber Regulation  
4 and Forest Restoration Fund for grants authorized pursuant to  
5 subdivision (h) of Section 4629.6 of the Public Resources Code,  
6 with priority given to grants that improve forest health by  
7 remediating former marijuana growing operations.

8 (2) Fifty percent shall be deposited into the Fish and Game  
9 Preservation Fund.

10 (g) *Any civil penalty imposed pursuant to this section for the*  
11 *violation of an offense described in paragraph (4), (5), or (6) of*  
12 *subdivision (a) or subparagraph (D), (E), or (F) of paragraph (1)*  
13 *of subdivision (b) for which the person was convicted shall be*  
14 *offset by the amount of any restitution ordered by a criminal court.*

15 ~~(g)~~

16 (h) For purposes of this section, “controlled substance” has the  
17 same meaning as defined in Section 11007 of the Health and Safety  
18 Code.